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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,976	02/09/2004	Wayne Belcher	20108/0200867-US0	9594
7278	7590	05/05/2006	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257				LUK, EMMANUEL S
		ART UNIT		PAPER NUMBER
				1722

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/774,976	BELCHER, WAYNE	
	Examiner	Art Unit	
	Emmanuel S. Luk	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 April 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-17 and 21-23 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/18/04.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____ .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17 and 21-23, drawn to an apparatus, classified in class 425, subclass 458.
 - II. Claims 18-20, drawn to a method, classified in class 15, subclass 235.18.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group II and Group I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used to practice another and materially different process such as using for applying non-sealant material upon another surface, a specific example would be a food product.
3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Wiegand a provisional election was made without traverse to prosecute the invention of Group I, claims 1-17 and 21-23. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 18-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 7, 17, and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Arnett (DE 31965).

Arnett teaches a tool having a handle (1) of a planar configuration, and a planar applicator portion (2) that is fixed to the handle with a free tip section (4) having a spline radius. The handle and applicator portion are manufactured the same and are integrated. The tip having a passive shaped curvature and the handle surface appears smooth.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 4-6 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnett (DE 31965) in view of Cacossa (5759590).

Arnett teaches a tool having a handle (1) of a planar configuration, and a planar applicator portion (2) that is fixed to the handle with a free tip section (4) having a spline radius. The handle and applicator portion are manufactured the same and are integrated. The tip having a passive shaped curvature and the handle surface appears smooth.

Arnett fails to teach the construction of the handle and the applicator.

Cacossa teaches that the handle can be made out of plastic, wood, metal, or the like (Col. 4, lines 22-26), and the blade structure can be made from metallic material, from plastic, or other substantially rigid material (Col. 4, lines 27-35).

It would have been obvious to one of ordinary skill in the art that the tool taught by Arnett is made from a material such as plastic or metal as these are common materials to construct tools.

In regards to claim 6, the use of injection molding for manufacturing the applicator portion is a product by process claim. While it is taken into consideration, this

does not give actual structural limitations to the apparatus especially since other process of molding can also be utilized to create the same apparatus structure.

In regards to claims 13-15, these are dimensions to the tool that can be varied according to design choice. In addition, in claim 14 wherein the width is determined based on the width of the joint to be sealed does not provide a positive structural limitation since there is no guidance to determine for one skilled in the art to determine the boundaries of width. Claim 16 is also based primarily upon design and user choice since comfortable gripping is determined more upon the particular user.

10. Claims 8-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Campbell (5675860).

Campbell teaches the handle (30) and applicator (58,68), the applicator having a spline radius (Fig. 3 and 4) that is aggressive shaped curvature, the applicator having a thickness that decreases linearly towards the edge (Fig. 6).

Campbell fails to teach the specific thickness of the applicator. However, it would have been obvious for one of ordinary skill in the art to recognize the different thickness for application of the material since Campbell does teach the concept of the applicator thickness decreasing towards the edge.

Conclusion

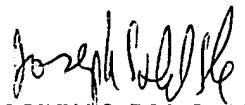
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weir (949669), Shuttleworth (1703785), Klaus (1704329),

Muscott (2935758), Wilson (4919604), Kim (5680668), Silverstein (5699580), Nistico (2004/0068819).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Thursday 8 to 5 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOSEPH S. DEL SOLE
PRIMARY EXAMINER

5/1/06

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